

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT L. CANNON,

: CIVIL ACTION

Plaintiff,

v.

SWAGWAY, LLC D/B/A SWAGWAY,
HOVERZON, LLC D/B/A SWAGWAY
AND SWAGTRON, MODELL'S INC.,
MODELL'S SPORTING GOODS, INC.,
AND MODELL'S PA II, INC.,

: **JURY TRIAL DEMANDED**

Defendant.

To: **United States District Court**
Eastern District of Pennsylvania

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § § 1441 and 1446, Defendant Swagway, LLC d/b/a Swagway (hereinafter "Swagway"), by and through its attorneys, Goldberg Segalla LLP, submits this Notice of Removal from the Pennsylvania Court of Common Pleas, Montgomery County, in which the above-captioned matter is now pending, to the United States District Court for the Eastern District of Pennsylvania. In support of said Notice, Defendant states as follows:

1. This is a product liability action arising from an alleged incident that occurred on April 26, 2016, involving a hoverboard allegedly designed and/or manufactured by Swagway. *See* a true and correct copy of the Complaint attached hereto as Exhibit "A."
2. Plaintiff commenced this action on April 19, 2018 by filing a Writ of Summons in the Pennsylvania Court of Common Pleas, Montgomery County bearing Docket No. 2018-07786

and captioned above. *See* a true and correct copy of the Writ attached hereto as Exhibit “B.”

3. Swagway was served with the Writ via certified mail on or about May 7, 2018. *See* a true and correct copy of the Affidavit of Service attached hereto as Exhibit “C.”

4. Plaintiff’s Complaint was not filed until June 27, 2019. *See* Exhibit “A.”

Timeliness of Removal

5. 28 U.S.C. § 1446(b)(3) reads in relevant part “...if the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, or other paper from which it may first be ascertained that the case is one which is or has become removable.”

6. Further, 28 U.S.C. § 1446(c)(3)(A) provides “If the case stated by the initial pleading is not removable solely because the amount in controversy does not exceed the amount specified in section 1332(a), information relating to the amount in controversy in the record of the State proceeding, or in responses to discovery, shall be treated as “other paper” under subsection (b)(3).

7. Since this Notice of Removal is being filed within thirty (30) days of Defendant’s first notice that the case is removable, it is timely filed pursuant to 28 U.S.C. § 1446(b)(3).

Amount in Controversy

8. The Complaint states that the amount in controversy certainly exceeds \$50,000.00. *See* Exhibit “A”.

9. Plaintiff alleges that the accident caused him to suffer a serious trimalleolar fracture of the right ankle and both lower leg bones, which required surgery. *See* Exhibit “A,” ¶ 16.

10. Plaintiff also alleges that she has incurred emotional and economic injuries. *See* Exhibit “A,” ¶ 26.

11. Thus, it is clear that the alleged amount in controversy exceeds \$75,000.00.

Diversity of Citizenship

12. The Complaint states Plaintiff Robert L. Cannon, is domiciled at 115 West Elm Street, Norristown, Montgomery County, Pennsylvania 19401. *See* Exhibit “A,” ¶ 1.

13 The Complaint states Sagway is a corporation organized and operating at its place of business at 3431 William Richardson Drive, Suite F, South Bed, IN 46628. *See* Exhibit “A,” ¶ 2.

14. The sole member of Swagway is Johnny Zhu who is a resident of Indiana.

15. The Complaint states Defendant Hoverzon, LLC has home offices at 3225 McLeod Drive, Suite 100, Las Vegas, NV 89121. *See* Exhibit “A,” ¶ 3.

16. The Complaint states Defendants Modells’, Inc., Modell’s Sporting Goods, Inc., and Modell’s PA II, Inc. have a home office at 498 Seventh Avenue, 20th Floor, New York, NY 10018. *See* Exhibit “A,” ¶ 4.

17. Diversity of citizenship exists amongst all of the parties.

Plea for Removal

18. This Honorable United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332 because this is a civil action in which there is complete diversity of citizenship between Plaintiff and Defendants, and in which the amount in controversy exceeds \$75,000, exclusive of interest and costs, as described below.

19. Therefore, this civil action is removable to this Court pursuant to 28 U.S.C. §1441.

20. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being submitted for filing with the Clerk of the Montgomery County Court of Common Pleas, and is being served upon Plaintiff.

21. In filing this Notice of Removal, Swagway does not waive any defects in service of process, venue or personal jurisdiction.

22. For the foregoing reasons, this United States District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a).

WHEREFORE, Defendant files this Notice of Removal so that the entire State Court Action under Docket No. 2018-07786, now pending in the Pennsylvania Court of Common Pleas, Philadelphia County, shall be removed to this Court for all further proceedings.

GOLDBERG SEGALLA LLP

By: 

Matthew R. Shindell (PA Bar No.: 88379)
Attorney for Defendant, Swagway, LLC
d/b/a SWagway
1700 Market Street, Suite 1418
Philadelphia, PA 19103
Phone: 267-519-6840/Fax: 267-519-6801
Email: mshindell@goldbergsegalla.com

Dated: 7/12/19

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

<u>ROBERT L. CANNON,</u>	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
SWAGWAY, LLC D/B/A SWAGWAY,	:	JURY TRIAL DEMANDED
HOVERZON, LLC D/B/A SWAGWAY	:	
ABD SWAGTRON, MODELL'S INC.,	:	
MODELL'S SPORTING GOODS, INC.,	:	
AND MODELL'S PA II, INC.,	:	
	:	
<u>Defendant.</u>		

AFFIDAVIT

I, Matthew R. Shindell, Esquire, being sworn according to law deposes and says that he is counsel for Petitioner, Swagway, LLC d/b/a Swagway, in the within matter; and that he has read the foregoing Notice for Removal and believes it to be true and correct, to the best of his knowledge, information and belief.

GOLDBERG SEGALLA LLP

By: _____

Matthew R. Shindell

Dated: 7/12/19

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ROBERT L. CANNON,	:	CIVIL ACTION
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Plaintiff,	:	
	:	
v.	:	
	:	
SWAGWAY, LLC D/B/A SWAGWAY,	:	JURY TRIAL DEMANDED
HOVERZON, LLC D/B/A SWAGWAY ABD	:	
SWAGTRON, MODELL'S INC., MODELL'S	:	
SPORTING GOODS, INC., AND MODELL'S	:	
PA II, INC.,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, Matthew R. Shindell Esquire, hereby certify that a copy of the attached has been served on the following individuals by the following means on this July 12, 2019:

VIA ELECTRONIC FILING

Prothonotary
Montgomery County
Norristown, PA 19404

VIA FIRST CLASS MAIL

Frank P. Murphy, Esquire
43 E. Marshall Street
Norristown, PA 19401
Attorney for Plaintiff

Hoverzon, LLC
3225 McLeod Drive, Suite 100
Las Vegas, NV 89121

Modell's, Inc.
498 Seventh Ave., 20th Fl.
NY, NY 10018


Matthew R. Shindell